petitioner's

supplemental

brief

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Supreme Court of the United States

OCTOBER TERM, 1976.

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,
Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONERS' SUPPLEMENTAL BRIEF.

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Introduction.

Since the filing of the reply brief for petitioners, certain subsequent decisions of this Court have been rendered which give further support to the petitioners' position in this cause. Therefore, pursuant to Rule 41 of the Supreme Court Rules, petitioners submit herewith their supplemental brief presenting late authorities.

I.

THE FAILURE TO GRANT THE REZONING REQUEST OF THE RESPONDENTS DID NOT VIOLATE THE CIVIL RIGHTS ACTS, THE FAIR HOUSING LAW, OR THE FOURTEENTH AMENDMENT.

The decision of the Court of Appeals in this case reversed the trial court, but in doing so generally sustained the findings of the trial judge. The District Court refused to find intentional racial discrimination on the part of the petitioners. The District Court had found that the claim of the denial of equal protection had not been proven, and the Court of Appeals declined to hold that that finding was clearly erroneous. 517 F. 2d 409, 412. The Court of Appeals also held that the District Court's finding that the petitioners were concerned with the integrity of the Village's zoning plan was not erroneous. 517 F. 2d 409, 412. The Court of Appeals further recognized that merely because a racial minority constituted a higher percentage of the lower and moderate income category, this disparity did not necessarily mean that the zoning change refusal had the type of racially discriminatory effect that required the invocation of the compelling interest test. The Court of Appeals conceded that the Village had not created the segregated housing pattern which that Court said existed in the entire Chicago area. 517 F. 2d 409, 414.

The trial court concluded that the weight of the evidence proved that the Village was motivated by a legitimate desire to protect property values and the integrity of the Village's zoning plan. The Court of Appeals did not challenge these findings, but held that the diminution of neighboring property values was a purely private monetary consideration, and in this instance was not a compelling interest. While recognizing that there was no discriminatory administration with respect to the Arlington Heights Zoning Ordinance, the Court of Appeals based its decision on a purported violation of the Fourteenth Amendment.

In the recent case of *Hills* v. *Gautreaux*, ... U. S. ....., 47 L. Ed. 2d 792 (April 20, 1976), the Court recognized that any effort to remedy admitted segregation in public housing by remedial court orders in a metropolitan-wide area must be subject to the police power of municipalities in which public housing was to be located. The Court pointed out that the use of the program to expand low income housing opportunities outside areas of minority concentration would not have a coercive effect on suburban municipalities. At 47 L. Ed. 2d 808, this Court said:

> "For under the program, the local governmental units retain the right to comment on specific assistance proposals, to reject certain proposals that are inconsistent with their approved housing assistance plans, and to require that zoning and other land use restrictions be adhered to by builders."

The Court went on to say:

> "The remedial decree would neither force suburban governments to submit public housing proposals to HUD nor displace the rights and powers accorded local government entities under federal or state housing statutes or existing land use laws."

Thus, it is clear that any court ordered efforts to cure the so-called segregated housing market found to exist in the Chicago metropolitan area must be subject to the zoning and land use restrictions of the communities where low and moderate income housing is to be placed. Where, as here, the Zoning Ordinance of the Village of Arlington Heights is admittedly a reasonable exercise of the legislative discretion vested in the corporate authorities of the Village, which was held invalid only because the Court of Appeals attempted to apply a compelling interest test in light of the metropolitan area situation, the doctrine of *Hills* v. *Gautreaux* requires that such a legitimate land use and zoning restriction should be sustained.

Also in point was this Court's recent decision in the case of *Washington* v. *Davis*, ... U. S. ....., 48 L. Ed. 2d 597

(June 7, 1976). In that case this Court repeated its previous holdings to the effect that the Fourteenth Amendment did not require striking down public acts in the absence of proof of discriminatory racial purpose merely because there was a substantial disproportionate racial impact. In that case the Court was concerned with a qualifying examination administered to prospective police officers. It was claimed that there had been a violation of the Fourteenth Amendment because a disproportionate number of Negroes were excluded. At 48 L. Ed. 2d 610, this Court said:

> "Both before and after Palmer v. Thompson, however, various Courts of Appeals have held in several contexts, including public employment, that the substantially disproportionate racial impact of a statute or official practice standing alone and without regard to discriminatory purpose, suffices to prove racial discrimination violating the Equal Protection Clause absent some justification going substantially beyond what would be necessary to validate most other legislative classifications.[12] The cases impressively demonstrate that there is another side to the issue; but, with all due respect, to the extent that those cases rested on or expressed the view that proof of discriminatory racial purpose is unnecessary in making out an equal protection violation, we are in disagreement".

In footnote 12 at page 610, the Court listed a number of lower court opinions which expressed the view that proof of discriminatory racial purpose was unnecessary. Among those cases specifically noted and which were specifically disapproved was the Court of Appeals' decision in the instant case.

We respectfully suggest that the recent decisions in *Hills* v. *Gautreaux* and *Washington* v. *Davis* are totally consistent with the previous decisions of this Court cited in petitioners' original and reply briefs. The unquestionable conclusion to be drawn from these decisions is that, in the absence of proof of purposeful racial discrimination, the mere fact a greater percentage of blacks might occupy Lincoln Green than other housing in

Arlington Heights was insufficient to invalidate the Zoning Ordinance of the Village as it affected the subject property. Both the trial court and the Court of Appeals in this case recognized that the Zoning Ordinance of the Village was based upon proper planning considerations and that the Village's efforts were undertaken to preserve the integrity of that ordinance. No racial motive nor discriminatory practice was proven—none existed.

As this Court has now made specific in *Hills*, the placing of low or moderate income housing in suburban communities is subject to existing valid zoning ordinances and other land use restrictions. The mere fact that low or moderate income housing is involved does not warrant the repudiation of otherwise valid police power ordinances. The fact that a disproportionate number of minority persons may be excluded does not make out an equal protection violation absent proof of discriminatory racial purpose.

Washington v. *Davis* also further lays to rest respondents' argument made from analogy to Title VII cases.

II.

THE RESPONDENTS FAILED TO OVERCOME THE PRESUMPTION OF VALIDITY ATTACHING TO THE ZONING ORDINANCE OF THE VILLAGE OF ARLINGTON HEIGHTS.

In our original brief we argued that the law was well established that a Zoning Ordinance is presumptively valid and the party assailing its validity must show by clear and convincing evidence that it is invalid. If there is any room for a reasonable difference of opinion, the Court will not substitute its judgment for that of the legislative body.

In the recent decision of *Eastlake* v. *Forest City Enterprises, Inc.*, ... U. S. ....., 49 L. Ed. 2d 132 (June 21, 1976), this Court was faced with an attack upon a charter provision of

the City of Eastlake which required a referendum to approve a zoning change. This Court again recognized the limits of constitutional protections as applied to property owners seeking to set aside a zoning restriction. In the *Eastlake* case, as in the instant case, there was no contention that the existing zoning classification rendered the respondents' property valueless or diminished its value below the value when the respondents acquired it. In the instant case, the subject property was to be purchased subject to rezoning for $300,000. The respondents' own witness conceded that the subject property was worth at least $375,000 under its existing single-family classification (R. 471). In a footnote at 49 L. Ed. 2d 138, this Court in the *Eastlake* case recognized that mere interference with a property owner's desires was insufficient to invalidate a zoning ordinance. The Court said:

> "8. [5b] By its nature, zoning "interferences" significantly with owners' uses of property. It is hornbook law that "[m]ere diminution of market value or interference with the property owner's personal plans and desires relative to his property is insufficient to invalidate a zoning ordinance or to entitle him to a variance or rezoning." 8 McQuillan, Municipal Corporations § 25.44, at 111. There is, of course, no contention in this case that the existing zoning classification renders respondent's property valueless or otherwise diminishes its value below the value when respondent acquired it."

At page 139 this Court commented on its landmark decision in *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 71 L. Ed. 303, 47 S. Ct. 114 (1926). In that case the Court held that a property owner could challenge a zoning restriction if the measure was clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare. But this Court went on to say in *Eastlake* at page 139, in language particularly appropriate to the case at bar:

> "But no challenge of the sort contemplated in Euclid v. Ambler is before us. The Ohio Supreme Court did not hold,

> and respondent does not argue, that the present zoning classification under Eastlake's comprehensive ordinance violates the principles established in Euclid v. Ambler. If respondent considers the referendum result itself to be unreasonable, the zoning restriction is open to challenge in state court, where the scope of the state remedy available to respondent would be determined as a matter of state law, as well as under Fourteenth Amendment standards. That being so, nothing more is required by the Constitution."

We suggest that the evidence in the trial court, as recognized by the Court of Appeals, was insufficient to overcome the presumption of validity attaching to the Zoning Ordinance. It was only by the erroneous use of the compelling interest test that the Court of Appeals was able to transform this garden variety zoning case into an equal protection cause. This Court's recent recognition in the *Eastlake* case that a mere interference with the owner's plans to develop his property is insufficient to invalidate a zoning ordinance clearly is applicable to the case at bar. The respondents failed to overcome the presumption of validity attaching to the Zoning Ordinance as it related to the subject property. The mere fact that a nondiscriminatory Zoning Ordinance, administered in a nondiscriminatory manner, might result in the exclusion of some low income people from an area zoned for single-family purposes does not elevate a conventional zoning controversy to the level of an attack on basic constitutional rights.

CONCLUSION.

We respectfully direct this Court's attention to its recent decisions in the *Hills, Washington* and *Eastlake* cases as further support for the arguments originally advanced by the petitioners in this case.

Respectfully submitted,

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